

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SAN BERNARDINO AND THE SAN
BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
REGARDING THE SAN BERNARDINO COUNTY REPLACEMENT BENEFITS
PLAN**

This Memorandum of Understanding ("MOU") is entered into by and between the San Bernardino County Employees' Retirement Association ("SBCERA") and San Bernardino County ("County") to be effective beginning on October 1, 2003.

WHEREAS, SBCERA provides retirement benefits to employees of the County of San Bernardino and to participating districts, and

WHEREAS, the amount of benefits that can be provided to SBCERA members is limited by Section 415(b) of the Internal Revenue Code ("section 415(b)" and "Code" respectively), and

WHEREAS, the Code also provides that a County can establish a replacement benefits plan to pay the full benefits earned by SBCERA members whose benefits are limited by Section 415(b) , and

WHEREAS, such a replacement benefits plan is used by many other entities, in both the private and public sector, to replace benefits limited by section 415(b), and

WHEREAS, it would be to the benefit of SBCERA and the County to ensure that all of its members/employees receive the entire retirement benefits which they would earn under SBCERA but for the limits of the Code, and

WHEREAS, the most efficient way for the County to operate a replacement benefits plan is to enter into a memorandum of understanding with SBCERA setting out the responsibilities of the County and SBCERA with respect to such a plan, and

WHEREAS, some Districts located within the County also participate in SBCERA and the most efficient way for Districts to provide replacement benefits is to participate in a replacement benefits plan that is established by the County, sharing the cost thereof, and

WHEREAS, the County has provided to SBCERA the County's Replacement Benefits Plan, a copy of which is attached to hereto.

THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE COUNTY OF SAN BERNARDINO ("COUNTY") AND THE SAN BERNARDINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("SBCERA") AS FOLLOWS:

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1. Purpose of Agreement

This memorandum of understanding ("MOU") is entered into by the County and SBCERA in order to facilitate the efficient operation by the County of a replacement benefits plan ("Plan") that will provide benefits to retired SBCERA members whose benefits are limited by Section 415(b) of the Internal Revenue Code ("Code").

2. Payment of Replacement Benefits

(a) In accordance with the Plan, the County shall pay to affected retired members of SBCERA, and to their surviving beneficiaries (if any), the difference between the benefits that would be payable from SBCERA without regard to the limits of Section 415(b) of the Code and the benefits that can be paid by SBCERA without violating Section 415(b). These benefits are called "replacement benefits".

(b) The County shall pay replacement benefits from its general assets. No assets of SBCERA shall be used to pay replacement benefits and no assets of SBCERA shall be used to pay the cost of administration or any other costs regarding the operation of the Plan.

3. Determination of Amount of Replacement Benefits

(a) In accordance with its responsibilities under Section 415(b), SBCERA shall determine the amount of benefits for any affected retired member and surviving beneficiaries that would be paid from SBCERA without the limits of Section 415(b), and shall determine the amount of the benefits that can be paid to such persons in accordance with the limits of Section 415(b). The difference between these two amounts (if any) is the amount of replacement benefits payable by the County under the Plan.

(b) SBCERA shall make this determination for the first year that the benefits of any affected retired member or surviving beneficiary are limited by Section 415(b) and for each relevant year thereafter. Annual determination is needed because both the amount of the limits and the amount of SBCERA benefits may change annually.

(c) To the extent that the amount of benefits that are limited by Section 415(b) change during the year, and in accordance with its responsibilities under Section 415(b), SBCERA shall recalculate the benefits payable by the County under the Plan.

(d) In accordance with the Plan, the County shall rely on the calculations by SBCERA set out in paragraphs (a), (b), and (c) of this section for purposes of determining the replacement benefits payable under the Plan.

(e) As provided in Section 5 of this MOU, SBCERA shall communicate to the County the information determined under this Section 3.

4. Effect on County Contributions To SBCERA of Section 415(b) Limits

(a) In accordance with the recommendation of SBCERA's actuary, County contributions to SBCERA shall be adjusted to take into account the fact that SBCERA cannot pay benefits that are greater than the limits provided by Section 415(b) of the Code.

(b) County contributions to SBCERA shall be adjusted when, in fact, replacement benefits are payable under the Plan. At that time, SBCERA shall reduce County contributions in an amount equal to the replacement benefits payable under the Plan in accordance with the recommendation of SBCERA's actuary.

5. Communications Between the County and SBCERA

(a) SBCERA shall communicate to the County, in writing and as soon as reasonably practicable, all information known to SBCERA that is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the retired members and surviving beneficiaries whose benefits are limited in any year; the amounts of their replacement benefits (if any) and the calculations that support these amounts; the date as of which the replacement benefits will become payable during each year (if any); the amount by which the replacement benefits change during the year (if at all); the amount of reduction in the County's contribution to SBCERA that will occur under section 4 hereof (if any); and the date that any replacement benefits must cease (for example, on the death of the retired member).

(b) The County shall communicate to SBCERA, in writing and as soon as reasonably practicable, all information that is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the Plan participants and eligible surviving beneficiaries who are paid replacement benefits; the amount of such payments; and the dates on which such payments occurred during the year.

6. Communications With Members

Upon receiving the needed information from SBCERA with respect to the amounts and timing of payment of replacement benefits, the County shall inform each affected individual about how the Plan works with respect to him or her, including the amounts that will be paid under the Plan for the particular year, the timing of such payments, any tax withholding elections available and all other information that is necessary or appropriate for operation of the Plan.

7. Districts

The Plan provides that Districts that participate in SBCERA may participate in the Plan, upon meeting the terms and conditions thereof. In such a case, the County will administer the Plan on behalf of and as agent of the District. For purposes of

replacement benefit determinations, SBCERA shall treat retired District members (and their surviving beneficiaries) who participate in the Plan in the same manner as if they had been County employees under this MOU. However, for purposes of Section 4 of this MOU, regarding adjustment of contributions, SBCERA shall treat each District separately and shall adjust the contributions of each District as recommended by SBCERA's actuary.

8. Reconciliation of Amounts

The County and SBCERA shall take all reasonable steps to reconcile, after the end of each year, the amounts of replacement benefits that have been identified as payable by SBCERA and the amounts of replacement benefits that have actually been paid. Underpayments or overpayments shall be corrected by the County in accordance with the Plan.

9. Tax Reporting

SBCERA and the County shall be separately responsible for their required reporting to the tax authorities, and neither shall be responsible for the other's reporting.

10. Indemnification and Hold Harmless

Each party to this MOU shall indemnify and hold the other harmless for any costs, damages, or other liabilities incurred hereunder on account of its own negligence or willful misconduct.

11. Miscellaneous

(a) Integration.

This Memorandum of Understanding and the documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof and supercede all prior agreements and understandings, both written and oral.

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(b) Amendment

This Memorandum of Understanding may only be amended pursuant to a written agreement executed by both parties hereto.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN ENTERED INTO AS OF
THE _____ DAY OF _____, 200__.

COUNTY OF SAN BERNARDINO

SAN BERNARDINO COUNTY EMPLOYEES'
RETIREMENT ASSOCIATION

DENNIS HANSBERGER, Chairman

[Insert name and title]

SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIRMAN OF THE BOARD

J. RENEÉ BASTIAN, Clerk of the
Board of Supervisors

By: _____
Deputy

DATED: _____

APPROVED AS TO LEGAL FORM:
ALAN K. MARKS, County Counsel

By: _____
RUTH E. STRINGER
Chief Deputy County Counsel
Attorneys for County of San Bernardino

DATED: _____